

and remedy provisions of 49 U.S.C. 30119 and 30120.

Authority: 49 U.S.C. 30118(d), 30120(h); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 8, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

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[Docket No. 93-79; Notice 6]

Fisher-Price, Inc.; Grant of Appeal of Denial of Petition for Determination of Inconsequential Noncompliance

On September 16, 1993, Fisher-Price, Inc. (Fisher-Price), of East Aurora, New York, filed a petition for an exemption from the notification and remedy provisions of 49 U.S.C. Chapter 301 on the ground that the noncompliance of certain of its child restraints with the flammability requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," was inconsequential as it relates to motor vehicle safety. On March 22, 1994, the National Highway Traffic Safety Administration (NHTSA) denied Fisher-Price's petition (59 FR 23253; May 5, 1994).

On May 6, 1994, Fisher-Price appealed that denial. Notice of the appeal was published on June 16, 1994 (59 FR 30957), and an opportunity was afforded for comment. However, on August 12, 1994, before the agency reached a decision on the appeal, Fisher-Price notified NHTSA that it was taking the position that it had never formally determined that a noncompliance existed. In response, on August 17, 1994, the agency terminated the inconsequentiality proceeding (59 FR 42326), as its regulations require that a determination of noncompliance exist before an inconsequentiality petition may be filed. See 49 CFR 556.4(b)(6).

Following this termination, on September 26, 1994, NHTSA's Associate Administrator for Enforcement published an initial decision, pursuant to 49 U.S.C. 30118(a), that the child restraints at issue failed to comply with FMVSS No. 213 (59 FR 49100). The agency then conducted a public proceeding on October 21, 1994 to allow Fisher-Price and other interested persons the opportunity to present information, views, and arguments on whether a noncompliance existed. Prior to the agency's final decision on this issue, on July 10, 1995, Fisher-Price submitted a Noncompliance Report in accordance with 49 CFR part 573, that

memorializes its formal determination that, under NHTSA's interpretation of the applicable test procedures, the seats in question fail to comply with S5.7 of FMVSS No. 213.

In view of the fact that a determination of noncompliance has been made, the agency may now consider Fisher-Price's petition for an inconsequentiality exemption. Moreover, rather than require Fisher-Price to file a new petition, NHTSA has decided to reinstate the proceeding at the same stage it was at when it was terminated.

For the reasons set forth below, the agency has decided to grant Fisher-Price's appeal. Thus, Fisher-Price will not be required to conduct a recall campaign. However, as part of the resolution of this matter, Fisher-Price has agreed to pay \$35,000 to the United States in settlement of NHTSA's claim that it violated 49 U.S.C. 30118(c) and 30119(c) by failing to notify the agency in a timely manner after it should, in good faith, have determined that these child restraints did not comply with the standard.

Paragraph S5.7 of FMVSS No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 ('Flammability of Interior Materials') (571.302)." Paragraph S4.3(a) of FMVSS No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute."

Fabric used in the shoulder straps in some models of Fisher-Price's child restraints exceeded this limit by .3 to .6 inch per minute when tested by NHTSA contractors in the spring of 1993 and when retested by Fisher-Price in the summer of 1993. Apparently, the noncompliance was due to the manner in which the fabric was treated during the process in which the straps were molded into a urethane shield. The company that performed this process for Fisher-Price is the same company that performed the identical process for Cosco, Inc., another manufacturer of child restraints whose request for an inconsequentiality exemption from the recall requirements of the statute is granted elsewhere in today's **Federal Register**.

In its September 16, 1993 letter to NHTSA, Fisher-Price acknowledged that it had "become aware of information suggesting that the molded shoulder belt webbing on its Model AO9101, DO9101, 9103, 9149, 9173, 9179 and 9180 car seats may not comply with the requirements of FMVSS 302." At the

same time, pursuant to 49 U.S.C. 30118(d) and 30120(h), Fisher-Price sought an exemption from the notification and remedy requirements of the statute on the ground that any such noncompliance was inconsequential as it relates to motor vehicle safety.

On March 22, 1994, NHTSA denied Fisher-Price's inconsequentiality petition (59 FR 23253, May 5, 1994). That notice contains a full discussion of the noncompliance, the company's petition, and the agency's rationale for its denial of the petition.

On May 6, 1994, Fisher-Price submitted an appeal of the agency's denial pursuant to 49 CFR 556.7. The appeal contains an analysis of the agency's decision, the affidavit of Gail E. McCarthy, Ph.D., P.E., of Failure Analysis Associates (FaAA), and a summary of the supplemental information Fisher-Price had submitted on February 25, 1994, March 17, 1994, and March 24, 1994 that had not been considered by the agency in its denial.

The February 25, 1994 submission contained information on the location of mold release compound on the shoulder webbing and its possible dissipation over time.

The March 17, 1994 submission contained research conducted by FaAA for Fisher-Price, including burn tests and a search of the literature and accident data regarding child seat fires. The submission also included a calculation of an alleged incremental risk associated with a recall of the noncompliant seats.

The March 24, 1994 submission, entitled "Supporting Documentation for Evaluation of the Fire Safety of Fisher-Price, Inc. Child Restraint Shoulder Harness Webbing," contained the detailed data and test results on which the material in the March 17, 1994 document was based.

In its May 6, 1994 appeal, Fisher-Price raised the following points: (1) Fisher-Price claimed that it had not determined that its child restraints failed to comply with FMVSS No. 213. (In view of Fisher-Price's recent acknowledgement that a noncompliance exists, this issue is now moot.) (2) Fisher-Price claimed that NHTSA had considered its petition under a stricter standard for inconsequentiality exemptions than is provided by statute because it involved child restraints. (3) Fisher-Price asserted that NHTSA's past precedent in granting inconsequentiality petitions compels a grant of this petition. (4) Fisher-Price contended that the data it submitted in support of its argument that the flammability of children's clothing

poses a much greater risk to safety than the noncompliant shoulder belt webbing were not adequately refuted.

In her affidavit submitted with the appeal, Dr. McCarthy asserted the following: (1) The shoulder belt webbing should properly be viewed as meeting the requirements of FMVSS No. 302; (2) any noncompliance that might be deemed to exist has no impact on motor vehicle safety; and (3) possible remedial measures would create substantially greater risk of injury to children than that presented by the webbing.

No comments were received on the appeal.

The agency has carefully reviewed all the data and arguments comprising the record of this case and has decided that the facts warrant granting the appeal. First, the margin of noncompliance is small, falling outside the standard's maximum by less than an inch per minute. (The agency wishes to emphasize that the failure to meet a performance requirement by a minimal amount does not in itself support an inconsequential determination; each petition must be considered in the context of all relevant facts.)

Second, the portions of the child restraint that do not comply with the standard, the shoulder straps, are a small part of the child restraint itself, and a minimal part of the fabric present in a vehicle's interior. Although it is possible that fuel-fed fires from vehicle crashes could consume a vehicle's interior, the flammability of the shoulder straps would be irrelevant to the severity of such a fire and to the potential injuries incurred by a child.

The primary purpose of NHTSA's flammability requirements is to prevent fires from "originating in the interior of the vehicle from sources such as matches or cigarettes." See paragraph S2 of 49 CFR 571.302. While it is theoretically possible that ashes from smoking materials could land upon the shoulder straps, the angle at which the straps normally rest makes this very unlikely.

NHTSA's reevaluation of the consequentiality of this noncompliance should not be interpreted as a diminution of the agency's concern for child safety. Rather, it represents NHTSA's reassessment of the gravity of the noncompliance based upon the likely consequences. Ultimately, the issue is whether this particular noncompliance is likely to increase the risk to safety compared to child restraints with shoulder straps that meet the four inches per minute requirement. Although empirical results are not determinative, the absence of any

reports of fires originating in the over three million restraints in which this noncompliance exists supports the agency's decision that the noncompliance does not have a consequential effect on safety.

For the above reasons, the agency has determined that Fisher-Price has met its burden of persuasion that the noncompliance at issue here is inconsequential to motor vehicle safety, and its appeal of the agency's original denial is granted. Accordingly, Fisher-Price is hereby exempted from the notification and remedy provisions of 49 U.S.C. 30119 and 30120.

Authority: 49 U.S.C. 30118(d), 30120(h); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 8, 1995.

Barry Felrice

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

List of Specially Designated Terrorists Who Threaten to Disrupt the Middle East Peace Process; Additional Name

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice of blocking.

SUMMARY: The Treasury Department is adding the name of an individual to the list of blocked persons who have been found to have committed, or to pose a risk of committing, acts of violence that have the purpose of disrupting the Middle East peace process or have assisted in, sponsored, or provided financial, material or technological support for, or service in support of, such acts of violence, or are owned or controlled by, or to act for or on behalf of other blocked persons.

EFFECTIVE DATE: August 11, 1995 or upon prior actual notice.

FOR FURTHER INFORMATION: J. Robert McBrien, Chief, International Programs, Tel.: (202) 622-2420; Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

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Background

On January 24, 1995, President Clinton signed Executive Order 12947, "Prohibiting Transactions with Terrorists Who Threaten to Disrupt the Middle East Peace Process" (60 FR 5079, Jan. 25, 1995—the "Order" or "E.O. 12947"). The Order blocks all property subject to U.S. jurisdiction in which there is any interest of 12 Middle East terrorist organizations included in an Annex to the Order. In addition, the Order blocks the property and interests in property of persons designated by the Secretary of State, in coordination with the Secretary of Treasury and the Attorney General, who are found 1) to have committed or to pose a significant risk of disrupting the Middle East peace process, or 2) to assist in, sponsor or provide financial, material, or technological support for, or services in support of, such acts of violence. The order further blocks all property and interests in property subject to U.S. jurisdiction in which there is any interest of persons determined by the Secretary of the Treasury, in coordination with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of any other person designated pursuant to the Order (collectively "Specially Designated Terrorists" or "SDTs"). An initial list of SDTs was published on January 25, 1995 (60 FR 5084).

The order also prohibits any transaction or dealing by a United States person or within the United States in property or interests in property of SDTs, including the making or receiving of any contribution of funds, goods, or services to or for the benefit of such persons.

Designations of persons blocked pursuant to the Order are effective upon the date of determination by the Secretary of State or his delegate, or the Director of the Office of Foreign Assets Control acting under authority delegated by the Secretary of the Treasury. Public